

AT A PUBLIC HEARING AND REGULAR MEETING OF THE HAMPTON PLANNING COMMISSION HELD IN THE COUNCIL CHAMBERS ROOM, 8TH FLOOR, CITY HALL, HAMPTON, VIRGINIA, ON NOVEMBER 8, 2004 AT 3:30 P.M.

PRESENT: Chairman Timothy B. Smith; Vice-Chairman Perry T. Pilgrim; Commissioners James A. Young, Regina Brayboy, Ralph A. Heath, III, and George E. Wallace

ABSENT: Commissioner Angela Leary

ITEM I. ROLL CALL

A call of the roll noted Commissioner Angela Leary as being absent.

ITEM II. MINUTES

There being no additions or corrections, a motion was made by Commissioner Ralph A. Heath and seconded by Commissioner James A. Young, to approve the minutes of the October 11, 2004 Planning Commission meeting. A roll call vote on the motion resulted as follows:

AYES:	Young, Brayboy, Heath, Pilgrim, Wallace, Smith
NAYS:	None
ABST:	None
ABSENT:	Leary

ITEM III. STAFF REPORTS

A. Youth Planner Report

Ms. Sarah Rodriguez, Youth Planner, stated the youth planners have been working to prepare for important events with the Youth Commission and the City of Hampton. A web site has been launched which links to various teen events and other exciting information. The Youth Commission was also given four Avril Lavigne tickets to give away. Two tickets were given away at the October 18th public meeting, and the other two tickets were given away in a contest over the website. The different committees have been very busy working on the Teen Center, promotional games, the Youth Friendly Guidebook, and the Appropriations Committee has been preparing grant applications. She stated the public meeting held on October 18th was a success. The Youth Commission gathered data on different issues for school improvement, and the Community Plan Committee is in the process of drafting the information into the report, which will be sent out to the superintendent and staff, as well as the Principals Advisory Councils of the schools and the Superintendent's Advisory Group. She thanked the Commission for their time and entertained questions.

B. Community Plan

Mr. Keith Cannady, Chief Planner, distributed a status report on the preparation of the Community Plan, and procedures in terms of public review. He stated the research and public drafting of the main section of the community plan are largely behind us, but there continues to be work in organizing the last section of the plan which deals with strategies. Because there is a large amount of information in this type of document, staff will be splitting the sections in phases. The first phase will be land use and transportation improvement, and the second phase will be a full draft of the community plan. This information will be shared with the focus groups, civic organizations, and a joint meeting will be held with the Planning Commission and City Council. Staff will then go back out to the public primarily through the organizations, meeting on their turf, and receiving their feedback. No specific date has been set for receiving the information because part of it depends on feedback from the organizations, and staff wants to allow plenty of time to get the word out regarding this document. He believes the plan should be adopted at a public hearing by early mid-March of next year.

In response to a question by Chairman Smith, Mr. Cannady stated the draft of the plan is not on the internet as of now, but it will be on the website once it is finalized.

Mr. Terry O'Neill, Secretary to the Commission, stated one of the real challenges of re-writing the Community Plan is the amount of information that gets generated and contained in the document. Given the multiple audiences, staff will need to distribute the right amount of information. Some people like to read from cover to cover and line by line, but most people in the community do not want to invest that amount of time in reading and want some kind of concise, consumable summary of the plan, which by its very nature, leaves out a lot of information. Staff will do their best to put out multiple versions of the plan, and the consumer can choose what version they would like to review. He stated staff is open to suggestions on how to mix and match the versions of this large document to get it out to the public with the right amount of detail that they desire.

C. Zoning Ordinance

Ms. Caroline Butler, Chief Planner, stated in October, she sent out the revised draft of the new Zoning Ordinance. This is the framework of how the ordinance will be formatted, and it will have some description of chapters and what they will include. She stated the draft was circulated and she has asked for comments by November 1st. She has not received many comments back, which is a sign that people may be happy with the ordinance. Discussions will be held with the consultants to evaluate actual chapters, and the draft should be distributed to the Planning Commission after the first of the year.

ITEM IV. PRELIMINARY SUBDIVISION

- A. **Danielle Place** a 3.80± acre zoned One-Family Residence District (R-11) proposed subdivision at the eastern terminus of Scones Drive, containing up to 11 single-family lots and one parcel.

After discussion, the Commission approved the following resolution:

WHEREAS: The Hampton Planning Commission has before it this day, Danielle Place preliminary subdivision, a proposed 3.80± acre residential development fronting on the east terminus (50'±) of Scones Drive, beginning 170'± east of its intersection with Lodi Court, with a maximum depth of 220'± and a maximum width of 920'±, with access from Scones Drive; and

WHEREAS: The property is zoned One-Family Residence District (R-11) which allows a minimum of 9,000 square foot lots with 70 feet of frontage and 1,700 square foot dwellings; and

WHEREAS: The subdivider, G.E. Gaynor Building Contractor, Inc., seeks conditional approval of up to eleven single family lots and one parcel to serve as a BMP, as shown on the preliminary subdivision plat of Danielle Place, dated October 25, 2004; and

WHEREAS: The subject subdivision plat is in conformance with the 2010 Comprehensive Plan which recommends low density residential development for the area where the proposed subdivision will be located; and

NOW, THEREFORE, on a motion by Commissioner Perry Pilgrim, and seconded by Commissioner Regina Brayboy;

BE IT RESOLVED that the Hampton Planning Commission recommends that Danielle Place preliminary subdivision plat be approved up to eleven single family residential lots and one parcel to serve as a BMP, as being in conformance with the 2010 Comprehensive Plan.

A roll call vote on the motion resulted as follows;

AYES: Young, Brayboy, Heath, Pilgrim, Wallace, Smith
NAYS: None
ABST: None
ABSENT: Leary

- B. **Pavilion Estates Re-Subdivision** a proposed split of lot 1, a 2.615± acre parcel within the Pavilion Estates Subdivision, located at the intersection of West Queen Street and St. Johns Drive, zoned One-Family Residence District (R-9), increasing the total number of lots in the subdivision from 25 to 36 lots.

After discussion, the Commission approved the following resolution:

WHEREAS: The Hampton Planning Commission has before it this day, Pavilion Estates preliminary re-subdivision plat, a proposed split of a 2.615 acre parcel within the development generally located at the intersection of West Queen Street and St. John's Drive, fronting 220'± on the northern side of West Queen Street and 550' ± on the western side of St. John's Drive, with a depth of 630'± and with access from West Queen Street and St. John's Drive; and

WHEREAS: The property is zoned One-Family Residence District (R-9) which allows a minimum of 6,000 square foot lots with 60 feet of frontage and 1,500 square foot dwellings; and

WHEREAS: The subdivider, Rob Lang Homes, seeks conditional approval of the split of lot 1 that will increase the total number of lots in Pavilion Estates subdivision from 25 to 36, as shown on the preliminary re-subdivision plat of Lot 1 of Pavilion Estates, dated October 25, 2004; and

WHEREAS: The subject subdivision plat is in conformance with the 2010 Comprehensive Plan which recommends low density residential development for the area where the proposed subdivision will be located; and

NOW, THEREFORE, on a motion by Commissioner Perry Pilgrim, and seconded by Commissioner Regina Brayboy;

BE IT RESOLVED that the Hampton Planning Commission recommends that Pavilion Estates preliminary re-subdivision plat of Lot 1 be approved that will result in a total of up to 36 single family residential lots in the entire Pavilion Estates development, as being in conformance with the 2010 Comprehensive Plan.

A roll call vote on the motion resulted as follows;

AYES:	Young, Brayboy, Heath, Pilgrim, Wallace, Smith
NAYS:	None
ABST:	None
ABSENT:	Leary

ITEM V. PUBLIC HEARING

Mr. O'Neill read the public hearing item notices on the agenda as advertised in the Daily Press on October 25 and November 1, 2004.

A. **Rezoning Application No. 1197**

Rezoning Application No. 1197 is a comprehensive rezoning action by the Planning Commission to rezone the following properties from Heavy Manufacturing District (M-3) to One Family Residence District (R-9): 602, 603, 605, 606 and 607 Washington Street; 108 and 112 Colbert Avenue; 613, 615 and 617 Eaton Street; and 111, 113, 115, 123 and 125 Poplar Avenue. M-3 permits manufacturing, industrial, and all commercial uses. R-9 allows single family development of 5-6.5 units per acre.

Ms Caroline Butler, Chief Planner, presented the staff report, a copy of which is attached hereto and made a part hereof. Approximately fifteen property owners were notified by certified mail, and two community meetings were held. Nine property owners supported the rezoning, five have not responded and one objected which is the property owner located at 112 Colbert Street. The majority of the property owners would like their property changed from Heavy Manufacturing District (M-3) to One-Family Residence District (R-9) in order to become a legal conforming use and to continue using their property as residential. She stated if the Planning Commission agrees to rezone all the properties, it would put the property at 112 Colbert Avenue in a legal non-conforming status. If seventy-five percent of the property is destroyed or no longer used as an office after twenty-four consecutive months, it will no longer be a legal non-conforming use. Staff recommends that the property at 112 Colbert Avenue be included in the rezoning because it sits next to vacant property zoned manufacturing which could in the future be developed to a manufacturing use. Staff recommends that all property be rezoned to single-family.

Mr. Andre Hunt, owner of 112 Colbert Avenue, stated he attended one of the community meetings and was the only one in attendance. He stated the vacant lot located at 114 Colbert Avenue and a commercial building located at 201 Colbert Avenue should be included in the rezoning. There is property located at 609 and 610 Washington Street which is manufacturing. He questioned why staff does not rezone all the properties in the vicinity that is zoned manufacturing.

Mr. O'Neill stated the exact strategy to rezone all the properties that Mr. Hunt has suggested was tried back in 1997, and he recalled that it passed at Planning Commission, but failed at City Council. He stated this is an in between measure to try and not deal with properties in the area that are either vacant or currently used as manufacturing or industrial, but to try and take care of the issues of those property owners who have residential structures on the property.

Commissioner Wallace commented that he believed it the Commission's and Council's job to make recommendations on the basis of what makes sense, and in this particular context, what makes sense is if all the properties were rezoned.

In response to a question by Commissioner Pilgrim, Mr. Hunt stated he wanted to be excluded because he has an office at the proposed location, and if it burned down more than 75%, he would not be able to rebuild as an office.

Commissioner Pilgrim stated all throughout the city, changes are being made to rezone non-conforming uses because if someone's house burns down completely, they will be able to rebuild. This protects the property owner and their insurance, because many insurance companies do not insure residential structures if zoned commercial, and if one of the houses burned down as of now, they would not be able to rebuild as a residential unit.

In response to a question by Commissioner Brayboy, Mr. Hunt stated he does not live in the home, but it is used as an office.

In response to a question by Chairman Smith, Mr. O'Neill stated if Mr. Hunt's primary concern is to protect the commercial office use on the site, the best choice would be to rezone the property to a commercial category, which would be a better adjoining group of permitted uses than heavy manufacturing which is an option. He stated if this is the direction the Commission wants staff to go, then the wise thing to do is to take out Mr. Hunt's property at this point and have conversations with Mr. Hunt to see how to proceed forward. At some point in the hearing, he would like to hear Mr. Hunt's response to this suggestion, because if his real desire is to keep the property at manufacturing and reserve the option to pursue manufacturing use, then as planners, that is a different twist.

Commissioner Young stated although a rezoning of all properties was considered in 1997, he felt it would be prudent to take another look at the properties, because he is not quite sure why the properties should maintain their manufacturing designation.

Mr. Hunt stated there is a person across the street from his office who is zoned manufacturing that he believes should be excluded also.

Mr. Donald Hunt, 1201 Parkside Drive, stated years ago, he and his brother purchased the property which was dilapidated, and the structure was torn down. At that time the property was M-3 which allowed any type of commercial development, and they have operated their business at the site for over thirty years. He stated if the property was rezoned, it would reduce their options and value as to what they can do in regards to the type of business. He would like to see both sides of Colbert remain M-3.

In response to a question by Commissioner Pilgrim regarding the neighborhood becoming upscale residential, Mr. Hunt stated he is happy for those who can afford high value homes, but there has to be a place where a small business can operate.

Mr. Carlyle Bland, 323 Center Street, stated he purchased a house on Pembroke Avenue and he highly encourages the rezoning, because the more properties that are rezoned, the higher the land values. He understands the business being located in the

proposed area, but high end residential gets more per square foot and per acre, and it would be a greater investment for everyone.

After discussion, the Commission approved the following resolution:

WHEREAS: The Hampton Planning Commission is sponsoring an application by various owners to rezone Pasture Point neighborhood properties at Nos. 602, 603, 605, 606 and 607 Washington Street, Nos. 108 and 112 Colbert Avenue, Nos. 613, 615 and 617 Eaton Street, and Nos. 111, 113, 115, 123 and 125 Poplar Avenue from Heavy Manufacturing District (M-3) to One Family Residence District (R-9); and

WHEREAS: The proposal is consistent with the recommendations of the 1997 North Armistead Avenue/North Back River Road Land Use Plan and the 2004 Downtown Master Plan, addenda to the 2010 Comprehensive Plan, designating this area for residential use; and

WHEREAS: The rezoning was initiated by Pasture Point property owners whose single-family residences are non-conforming uses in the M-3 zoning district; and

WHEREAS: If the properties' non-conforming status is lost, they cannot be re-built or re-used as residences, which places these owners at risk; and

WHEREAS: The owner of 112 Colbert Avenue requested that his property be deleted from the comprehensive area rezoning because he uses it as an office for his business and to zone it to R-9 would make it a non-conforming use; and

WHEREAS: A Commissioner noted that future plans for Pasture Point call for upscale residential development and that a rezoning to commercial would allow the office at 112 Colbert Avenue and not be as incompatible as M-3 zoning and uses adjacent to residential properties; and

WHEREAS: Planning Commission directed staff to discuss with the owner of 112 Colbert Avenue the rezoning of that property to another zoning category; and

WHEREAS: In response to a Commissioner's question as to why all of the M-3 properties in Pasture Point are not being proposed for residential zoning, staff replied that City Council denied a rezoning proposal for this in 1997 and that the current action is to protect the rights of the property owners who have non-conforming residences; and

WHEREAS: One speaker encouraged R-9 zoning for Pasture Point.

NOW, THEREFORE: On a motion by Commissioner Perry T. Pilgrim and seconded by Commissioner Ralph A. Heath, III,

BE IT RESOLVED that the Hampton Planning Commission does recommend to the Honorable City Council approval of Rezoning Application No. 1197, with the exclusion of 112 Colbert Avenue, which is recommended to remain M-3.

A roll call vote on the motion resulted as follows:

AYES:	Young, Brayboy, Heath, Pilgrim, Smith
NAYS:	Wallace
ABST:	None
ABSENT:	Leary

B. Conditional Privilege Application No. 80

Conditional Privilege Application No. 80 by Demissew Gedamu for live entertainment in conjunction with a restaurant at 17 E. Queens Way.

Mr. Demissew Gedamu, applicant, stated he operates an ethnic restaurant serving the Hampton community and surrounding localities as far as Williamsburg and Richmond, and he serves Ethiopian cuisine. He believes their presence in the area provides a cultural diversity which is crucial for a changing and growing market. He has been in this establishment over four months, and patrons who have visited his establishment have been overwhelming. He also finds that the restaurant business is seasonal, which requires a make-up of support when business is very slow, and live entertainment is being requested to be included in their projections. He thanked Ms. Butler and staff for granting a temporary permit for live entertainment in the past, which has provided a much needed service to the community. He stated his restaurant is the only food establishment on the block that does not have a conditional privilege for live entertainment. He plans to conduct the events within the laws and policies of the city, and to meet the concerns of his neighbors. He stated if he has made any mistakes in the past, he apologizes and asked the Commission to approve the conditional privilege.

Mr. Edward Haughton, Senior City Planner, presented the staff report, a copy of which is attached hereto, and made a part hereof. He stated the request is consistent with 2010 Comprehensive Plan and the recently adopted 2004 Downtown Hampton Master Plan that supports activities to enhance downtown Hampton. Conditions have been prepared to ensure the live entertainment will not be a detriment to public health, safety or welfare of the community. He has discussed this request with the Police Department and the ABC Board, and they have received no negative reports on this establishment. Planning staff recommends approval of Conditional Privilege Application No. 80 with nine conditions. He mentioned that staff would like to modify Condition No. 9 to state that the Conditional Privilege shall be re-evaluated with the above standards after a period of six (6) months from the date of approval by City Council.

In response to a question by Commissioner Heath, Mr. Haughton stated the normal period for evaluation is one year.

In response to a question by Commissioner Pilgrim, Mr. Haughton stated the rationale for modifying the conditional period to six months is that Mr. Gedamu is currently operating without a conditional privilege for live entertainment. He stated Mr. Gedamu mentioned a temporary permit that was granted which was only to be used for one occasion. Staff wants to ensure that the conditions prepared will be adhered to.

Mr. O'Neill stated since the time that the one year review period has been put into place, it was a safeguard so that applicants could be reviewed at any point in that time, and if there was some type of incident that caused concern, staff could bring the applicant back to the Planning Commission and Council for potential action. There have been issues with live entertainment in the past, and it is not inconsistent to deal with restaurant establishments that may have had some track record of having problems going through the procedures, such as Mr. Gedamu has at this point. He stated Mr. Gedamu has been operating without a permit before coming to the Commission. This necessitates or requires a closer perusal to help monitor the situation as it goes forward.

In response to a question by Commissioner Pilgrim, Mr. O'Neill clarified the six months condition helps staff to stay on track rather than wait a year to come back to the Commission.

In response to a question by Commissioner Heath, Mr. O'Neill stated the conditions attached to Conditional Privileges are not proffered or volunteered statements by the applicant, but they are conditions recommended by staff.

Mr. Dan Seachord, 14 Pine Lake Court, representing Downtown Hampton Development Partnership (DHDP) located at 756 Settlers Landing Road, stated the DHDP is requesting a deferral, and if it is not deferred, he is speaking on behalf of DHDP in opposition of the request. He stated each establishment that has come into downtown which is VA Live, Marker 20, and more recently, the group who was approved to have a restaurant in the old post office building, has been asked to go through an informal public meeting with the people in downtown who are interested in what happens to their community. The DHDP objects on procedural grounds because this particular business was not asked to do the same. The DHDP feels this is unfair to the other businesses, and the business should be subject to the same type of procedure that everyone else had to go through. This procedure was put into place due to VA Live because there were concerns expressed regarding the restaurant and the community wanted to know a lot about the restaurant. Another issue is that a lot of questions have come up about the business. It has already been acknowledged that the applicant is operating without a permit, and to give them a permit after-the-fact is unfair to the rest of the businesses. He stated there have been a lot of questions raised regarding what is happening at this particular business while they have been operating without a permit. Recently, there was an incident that occurred on October 30th that involved an altercation that may or may not have involved patrons from this business, but it is still under investigation. While these questions are active and need to be heard, the DHDP needs more information before this request goes forward. He stated if the Commission defers the request, he is sure that the people who are in attendance for this request will be able to come back again. If the

questions are answered satisfactorily, the DHDP would support the request, but if the Commission does not defer the request, on behalf of the DHDP, he is actively and openly opposing the request.

In response to a question by Commissioner Brayboy, Mr. Seachord stated it is his understanding that when VA Live came, they were seeking a live entertainment and ABC permit, but because of the building being located in the SPI-OH area, all applicants were asked to go through an informal public meeting, and everyone since then has been asked to do so.

Ms. Caroline Butler, Chief Planner, stated there were a lot of issues around the application for VA Live for live entertainment, which caused staff to take a critical look at how they evaluate conditional privilege applications for live entertainment. This resulted in a new chapter in the Zoning Ordinance for conditional privileges. Staff always encourages the applicant to hold a community meeting to inform the neighborhood of their request. She stated when Mr. Carlyle Bland applied for his conditional privilege for Marker 20, he conducted a public meeting. Somewhere in the interim between the time the request went to public hearing and applications were being submitted for live entertainment, staff re-wrote a chapter of the ordinance. Staff began to standardize and codify the conditions that were attached to live entertainment. She stated in looking at the live entertainment that have been approved in the downtown area, there are standards in terms of hours of operation, restriction of size for live entertainment both indoors and outdoors, sufficient staff on hand to ensure that appropriate behavior is maintained when patrons leave the businesses, noise level being at a certain decibel, and if the conditions are repeatedly violated, there is a provision in the ordinance for revocation of the permit. It was an oversight or misjudgment on staff's part that a community meeting was not requested. She stated with the standardized conditions for all of the businesses downtown, as well as the requests for live entertainment that were approved, there was no reason to request a community meeting.

In response to a question by Chairman Smith, Ms. Butler stated the community meetings are still voluntary, they are not required. Staff does encourage community meetings, and she apologized for the oversight and misjudgment regarding this request. She stated these standards have worked well, and the same standards are applied to this request as well.

In response to a question by Chairman Smith, Mr. Haughton stated he did not request the applicant to hold a community meeting, nor did staff request a community meeting with a former applicant, Mary Helen Restaurant, because of the standards that have been put in place.

Commissioner Wallace stated there has been some history relative to individuals that have requested permits for live entertainment, which made staff more cautious and apprehensive in their recommendations. He stated there has been no previous history or indication that there were concerns or opposition with this applicant.

Chairman Smith clarified to Mr. Seachord that staff did not drop the ball on this request, but because of the standardized procedures, a community meeting was not encouraged.

In response to a comment regarding an altercation in the vicinity of Mr. Gedamu's establishment, Mr. Haughton stated he was informed by Mr. Gedamu that these were not his patrons. He also talked with the Police Department, and there is no conclusive evidence that these were patrons from Mr. Gedamu's restaurant. There was another event that occurred the same night at the Virginia Air and Space Center and people walked from that event down Queensway.

Mr. Dennis Parker, owner of Goodfellas Restaurant and Bar, located at 13 East Queensway, stated he did not come to be condemning, but to find out the facts regarding this matter. He does not know the type of entertainment that is being held at the applicant's restaurant, and desired a response.

Mr. Gedamu stated he requested a temporary permit to be issued for live entertainment for the Ethiopian Coptic Orthodox New Year event, and his understanding was it was a temporary permit until the application process took place. He stated what Mr. Parker has referenced is the DJ entertainment that has taken place. When he went through the process for the temporary permit for the first event, he was informed that he could have DJ entertainment, which is not included in live entertainment. He stated the comments being made that he is operating without a permit for live entertainment is not true. The altercation that took place in the vicinity was not patrons from his establishment. He has four security officers on site, who search the customers when they enter the establishment because they do not want their patrons to create a problem with the adjacent neighbors, and he does not want to create a problem here at this meeting. He has not discussed any of these issues of concern with his neighbors, and if this had been done, the Commission would not be hearing from them because he would make sure they are not affected in a negative way by what he is doing.

In response to question by Commissioner Wallace, Mr. Gedamu stated the type of entertainment he has hired will be coming from Washington, DC, and on an interim, he feels he should be allowed to have local entertainment. His objective is to have cultural entertainment.

In response to a question by Chairman Smith, Mr. Gedamu stated he is willing to abide by the conditions set by Planning staff.

Mr. Parker stated on the night of October 30th, Mr. Gedamu had a DJ at his establishment, and the preferred style of music was hip hop and rap. He does not have a preference for that type of music, which is his personal opinion. He stated this music is known throughout the communities across the country as a type of music that attracts a certain type of clientele that downtown Hampton is not building upon and it is a crowd that he does not like to deal with. He stated on that night, there was a disturbance outside in the street. He was told there was a group of people near the doorway of Mr. Gedamu's

establishment, but that does not mean the patrons came out of or entered his establishment. The crowd moved from Mr. Gedamu's doorway to Marker 20, and they were not allowed to enter. At that point, an altercation took place, and an employee from Goodies came down to help, and the crowd moved toward the other end of the street, and a man was pushed through his window, and was cut severely. He stated these are the things he fears if this style of music comes to downtown Hampton. He believes that if this type music goes out to the general public, people coming to downtown Hampton to visit may think negatively on that fact. On previous occasions there have been private affairs held at Second Street, which is no longer a functioning entity, but is leased out from time to time. He stated on two or three occasions in the past year, there were parties of the same nature which involved the police and an actual shooting. He is not asking the Commission to deny the permit, but he just wants clarity from Mr. Gedamu on the type of entertainment being provided.

Ms. Regina Mays, owner of Shabby Chic located at 47 East Queensway stated she has been in business for six years and it has been a struggle to stay open because there is a perception in downtown Hampton that it is not a safe place to come. She loves Hampton, believes in it, and she is staying, even though three other businesses have come and gone. Approximately a month ago, she attended a Reggae concert at Mr. Gedamu's restaurant. She stated there was no security, and she was not searched or checked for weapons. She wanted to know why this did not occur. She stated to see people lined up outside a restaurant to be patted down and checked for weapons does not send a positive message to her customers or the tourists. She wanted to know why the security check is done for some of his entertainment and not for others.

In response to a comment by Chairman Smith, Ms. Sally Andrews, Deputy City Attorney, stated getting into the nature of the entertainment is far removed from the land use issue and possibly moving into a freedom of speech issue.

Mr. Gedamu stated he is going through this process learning what is needed to run a legitimate, secure establishment. He stated nothing happened during the Reggae concert. He could not give Ms. Mays an answer as to why she was not checked by security that he hired, and he was not up front when it did not occur. He stated the live entertainment begins at 10:00 a.m. and ends at 1:30 a.m. He does not feel Ms. Mays would be affected by what he is doing. He stated in regards to the search, if this is going to be a concern, it can be addressed. If the music bothers the businesses, this can be addressed. He will try to work with the businesses because he does not want to offend anyone. He believes he is civic and community conscious, but he does not know everything. If he has made a mistake, he wants to correct it, and he suggested that his neighbors sit down and discuss these issues of concern and address them.

Ms. Mays stated Mr. Gedamu is incorrect in his response. It does not matter whether her business runs by day or night, but what the people see in downtown Hampton is very poor, and there is a perception of downtown Hampton being unsafe and people do not want to come.

Mr. Carlyle Bland, proprietor of Marker 20, located at 21 East Kings Way, stated he does not specifically oppose the request for live entertainment, and he understands the legal issues on freedom of speech, but his concern is with the type of music. He stated punk venues in the early 80's, hard core venues in the early 90's, and rap and hip hop are associated with crime and violence. Every time one of these types of clubs opens, you expect this type of behavior. It has been seen in downtown Hampton with Second Street, and in Hampton with the Alley, Cool Runnings, and Infinity. He stated in his two years of operating the restaurant, he has never had to body search someone. When you get to the level of having to body search someone entering an establishment, it lowers the level of service to the business. He runs a family restaurant, and he should not have to body search people when they come through the door. He believes the investment the city is making to improve downtown Hampton makes this counter-productive to it. He stated if the Commission approves the live entertainment, he requests that DJs be eliminated, and he will give up his rights to have DJs also, even though he has never had a DJ.

Commissioner Pilgrim stated he has heard both the applicant and the other business owners state that they would meet with Mr. Gedamu and discuss this issue. He reiterated Ms. Andrews' remarks that these concerns are not land use issues, but what is going to be an issue is if previous applications that have been granted with certain conditions, and they are changed, it puts the Commission in some jeopardy.

Mr. John Sandhofer, 142 Winchester Drive, stated he is the Director of Hampton Event Makers which produces special outdoor events in the downtown Hampton area. He concurred with some of the statements made by the proprietors in downtown Hampton. One of the big events that occur in downtown Hampton each summer is the Saturday Night Block Party. He stated if anything happens either before, during, or after the time of the block party occurs, it is connected with the block party. He encouraged the owners to look at the type of music they are going to bring in. Certain music brings a certain crowd, but it does not mean that everyone who listens to that type of music is that type of person. However, it opens us up to bringing that type of clientele which is counter-productive to the downtown plan. He encouraged the Commission to defer the application in order to give the neighboring businesses time to review the request. The stakeholders have a chance to meet with the owner and come to some type of agreement that is acceptable to everyone. He stated the Commission has heard from three small business owners which is a difficult task, but he wished Mr. Gedamu the opportunity of having a prosperous business in downtown, but he wants to make sure the businesses are working together in a cooperative effort.

Mr. Steve Shapiro, Director of Codes Compliance, clarified the role of his department since it was alluded to by Mr. Gedamu. He stated Mr. Gedamu called him near the end of August and asked if he could have a private party at the restaurant for his church members for the Ethiopian New Year. He agreed to the party under those conditions. Around October 20th, he began to see fliers regarding an event he was going to have on October 23rd which was a Saturday night that his office knew nothing about. He stated the city has bent over backwards to accommodate that event, which was not a private party, and it was open to the public, and people were being charged admission at

the door. He stated Mr. Gedamu had some conditions which required the city's Fire Marshall to re-inspect the business, and security staff was paid to be on site that night. He talked with Mr. Mason, Chief Inspector, who works for him, and was informed that he did not tell Mr. Gedamu that a DJ was permissible. In fact, the Zoning Ordinance definition under live entertainment shows that a DJ is one of the things that is included in a conditional privilege, and the Codes Compliance Department has never told anyone that it is permissible to have a DJ without a conditional privilege.

Commissioner Wallace stated he received a request from Mr. Gedamu stating that he had contracted live entertainment out of Washington, D.C., and would lose a lot of money unless he was allowed to have that event. He asked staff to reconsider the situation, and have a discussion with the DHDP. In trying to be accommodating to small businesses, it was explained to Mr. Gedamu that this would be a one time only event.

In response to a question by Chairman Smith, Mr. Shapiro stated a DJ is considered live entertainment.

Chairman Smith asked that clear clarification be given to Mr. Gedamu on DJs as live entertainment between now and the next Planning Commission meeting. He also requested that Mr. Gedamu receive a copy of the conditions for live entertainment.

In response to a question by Commissioner Pilgrim, Mr. O'Neill stated if the Commission prefer that staff take a formal role in assuming the community meeting, they will do so, but historically, with all land use application or the majority of them, staff does not host meetings or send out invitations. The two restaurants that were referenced, (i.e. 2nd Street, and Roonies), both had a history of problems, particularly with outdoor live entertainment, and in those cases, staff felt it was warranted to take a particular action to make sure it was a collective thought process in how to move forward with new establishments. If the Commission feels, in this case, that staff should take an active role in assembling the businesses, they will do so, but he believed the DHDP could get the people to meet a lot better than staff, and staff will be happy to work with Mr. Seachord and make sure the right people meet for these conversations.

Commissioner Pilgrim requested that these conversations take place with Mr. Seachord, the DHDP, and the properties owners so that when they come back next month, discussions would have taken place.

After discussion, a motion was made by George E. Wallace, and seconded by Ralph A. Heath, III, that Conditional Privilege Application No. 80 be deferred to the December Planning Commission meeting in order to allow discussions with concerned parties (i.e., the DHDP and surrounding neighbors).

AYES:	Young, Brayboy, Heath, Pilgrim, Wallace, Smith
NAYS:	None
ABST:	None
ABSENT:	Leary

C. **Zoning Ordinance Amendment by the City of Hampton to amend Chapter 17.3, Article XIII (SPI-Hampton Roads Center II)**

Zoning Ordinance Amendment by the City of Hampton to amend Chapter 17.3, Article XIII (SPI-Hampton Roads Center II) to rename the Article “SPI-Hampton Roads Center North Campus;” add retail, service retail, hotels, medical services, and educational uses as permitted uses; delete machine shop, metal fabrication, truck or freight terminal, wholesale merchandising, warehousing, distribution center, ice and cold storage plant, and materials/equipment/storage yards; limit manufacturing uses to light manufacturing; establish use areas for permitted uses; implement variable width setbacks for parking lots and buildings; increase parking lot green area requirements from 4% to 10%; set a minimum standard for the number and size of vehicle parking stalls and trees per lot; allow fences in front yards; limit the use of EIFS as a primary building material; establish site lighting design standards; and require screening of loading operations.

AND

D. **Public Hearing: Resolution to Amend the “Hampton Roads Center II Master Plan”**

Public Hearing: Resolution to Amend the “Hampton Roads Center II Master Plan” by the City of Hampton. Proposed amendments to the master plan serve to rename the Plan; enable a broader mix of uses; modify development standards, the street network and site access; and addresses design, implementation and management of park infrastructure and park signage. The vision of the proposed plan amendment is represented in illustrative plans.

Ms. Caroline Butler, Chief Planner, presented the staff report, a copy of which is attached hereto, and made a part hereof. She stated staff request that these two items be deferred to the December Planning Commission meeting to allow Langley Air Force Base the opportunity to review the plans.

Mr. O’Neill mentioned that the Industrial Development Authority (IDA) is technically the owner of the aforementioned property and manages the development of the property along with the Economic Development Office, and has reviewed the material and approves the plan.

Ms. Laura Baie, Civil Engineer/Community Planner, Langley Air Force Base, stated unfortunately, Langley AFB did not receive much prior education regarding the change in the city’s Zoning Ordinance regarding the two subject plans, and they have not had a chance to put together a formal opinion on the plan. She briefly explained Langley AFB Air Installation Compatible Use Zone (AICUZ) Program. The program promotes compatible land use in the vicinity of Langley AFB by examining and evaluating the noise and accidental control associated with the base’s flying mission. The AICUZ includes the locations and definitions of runway clear zones, accident potential zones, noise zones,

and provides a list of land uses compatible with AICUZ operations. The AICUZ Program was developed by the Department of Defense in 1973 to protect aircraft operational capabilities, and assisting local government officials in protecting the public health safety and the quality of life for its citizens. She stated more careful study is needed in order for her to evaluate the development within the Noise Contour District, but Langley AFB did not have enough time to evaluate the proposed master plan. She stated Langley AFB greatly values the positive relationship it has experienced with its neighbors over the years, and as a part of the community, they have attested to minimized noise, night flights, and avoiding flights over heavily populated areas. It is their hope that in return, the city will see fit to incorporate Langley AFB's recommendations into the community's comprehensive land use plan, Zoning Ordinances, subdivision regulations, building codes, and other related documents. Langley AFB has met with many city planners on numerous occasions, and has expressed a desire to provide input to local communities as the city updates the land use plan and Zoning Ordinance. She hopes that if the Planning Commission approves changes to the ordinance today, they would also recommend that a decision of such magnitude allow Langley AFB additional time for their leadership to make a statement and provide additional input regarding the effects of future.

In response to a question by Commissioner Wallace regarding additional time, Ms. Baie stated the next public hearing will give them sufficient time.

After discussion, a motion was made by Commissioner Wallace and seconded by Commissioner Perry T. Pilgrim to defer the Zoning Ordinance Amendment by the City of Hampton to amend Chapter 17.3, Article XIII (SPI-Hampton Roads Center II) to the December Planning Commission meeting to the December 13, 2004 Planning Commission meeting. A roll call vote on the motion resulted as follows:

AYES:	Young, Brayboy, Heath, Pilgrim, Wallace, Smith
NAYS:	None
ABST:	None
ABSENT:	Leary

A motion was made by Commissioner George E. Wallace, and seconded by Commissioner Ralph A. Heath, III to defer the resolution to amend the "Hampton Roads Center II Master Plan to the December 13, 2004 Planning Commission meeting. A roll call vote on the motion resulted as follows:

AYES:	Young, Brayboy, Heath, Pilgrim, Wallace, Smith
NAYS:	None
ABST:	None
ABSENT:	Leary

ITEM VI. PLANNING DIRECTOR'S REPORT

Mr. O'Neill stated because of the delay in hiring staff, he will defer the Planning Department structure until the new staff is on board and then he will come back and report on the structure to the Commission.

Mr. O'Neill asked that authorization be given to hold a public hearing for a Zoning Ordinance Amendment to Special Public Interest District-Hampton Roads Center (SPI-HRC I).

A motion was made by Commissioner Ralph A. Heath and seconded by Commissioner James Young to authorize a public hearing for a Zoning Ordinance Amendment to Special Public Interest District-Hampton Roads Center (SPI-HRC I). A roll call vote on the motion resulted as follows:

AYES:	Young, Brayboy, Heath, Pilgrim, Wallace, Smith
NAYS:	None
ABST:	None
ABSENT:	Leary

ITEM VII. ITEMS BY THE PUBLIC

There were no items by the public.

ITEM VII. MATTERS BY THE COMMISSION

There were no matters by the Commission

ITEM IX. ADJOURNMENT

There being no additional items to come before the Commission, the meeting adjourned at 5:30 p.m.

Respectfully submitted,

Terry P. O'Neill
Secretary to Commission

APPROVED BY:

Timothy B. Smith
Chairman